84-283

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IN THE SUPREME COURT OF THE UNITED STATES

_____ TERM, 1984

No. _____

MARK A. SEATS and TAMMIE SEATS, Petitioners,

-vs-

PEOPLE OF THE STATE OF ILLINOIS, Respondent.

PETITION FOR A WRIT OF CERTIORARI

TO THE APPELLATE COURT OF ILLINOIS

FIFTH JUDICIAL DISTRICT

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35 pp

(a)

QUESTIONS PRESENTED FOR REVIEW

This Petition for a Writ of Certiorari presents the following questions:

(1) Whether this Court's opinion in Illinois v. Gates applies retroactively.

(2) Assuming, arguendo, that Gates should receive retroactive application, whether the Appellate Court of Illinois, Fifth Judicial District, erred in holding that the Complaint for Search Warrant in this case was sufficient under the Gates "totality of circumstances" rationale.

(b)

LIST OF ALL PARTIES TO PROCEEDINGS IN THE APPELLATE COURT

The above caption to this case contains the names of all parties.

(c)

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(d)

REFERENCE TO REPORTS OF OPINIONS

The opinion of the Appellate Court of Illinois, Fifth Judicial District, is reported as People v. Seats, _____ Ill.App.3d _____, 460 N.E.2d 110, (5th Dist. 1984), and is appended. The unpublished order of the Supreme Court of Illinois denying Petitioner's Petition for Leave to Appeal is appended.

(e)

JURISDICTION OF THE UNITED STATES SUPREME COURT

The decision of the Appellate Court of Illinois, Fifth Judicial District, was filed on February 9, 1984. The Supreme Court of Illinois denied the Petitioner's Petition for Leave to Appeal in an unpublished Order on June 5, 1984. A copy of the Order is appended. The statutory provision conferring jurisdiction on this Honorable Court to review this judgment is 28 U.S.C. Section 1257(3).

(f)

CONSTITUTIONAL PROVISION INVOLVED

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Constitution, Amendent IV.

(g)

STATEMENT OF THE CASE

On November 10, 1982, Ray Lee Jones, the Assistant Chief of Police in Sandoval, signed a Complaint for warrant to search the trailer of the Defendants located at 407 N.W. Second Street in Sandoval (R. C6). [Note: the two volumes of the record on appeal are essentially duplicative; the first volume pertains to cause No. 82-CF-147 (the burglary), and the second to cause No. 82-CF-148 (the related theft). References will be to the volume in cause No. 82-CF-147, unless the contrary is indicated.]

In support of the Complaint, Officer Jones stated that on November 10, 1982, he received an anonymous phone call from a woman who informed him that the items taken in the burglary of the office of nurse Eva E. Schuler were at 407 N.W. Second Street in Sandoval (R. C6). She told Jones that she had seen the Defendants carry a black medical bag into the trailer at that location (R. C6). Jones further averred that he had verified that the Defendants lived at that address and that the Defendants, whom he knew, were not involved in any type of medical practice (R. C6). He added that Schuler told him the following items were taken in the burglary: a black medical bag, a calculator, and assorted medical instruments such as forceps, stethoscopes and blood pressure kit (R. C6). The requested warrant was issued and certain items were seized from the Defendants' trailer.

The Defendants filed a Motion to Suppress use of those items at trial, alleging that said items

were seized in violation of the Defendants' rights under the Fourth Amendment to the United States Constitution (R. C87-C89). Following an evidentiary hearing held on March 3, 1983, the Court granted Defendants' Motion, relying upon, inter alia, Aguilar v. Texas (1964), 378 U.S. 108, 12 L.Ed.2d 723, 84 S.Ct. 1509, Spinelli v. United States (1969), 393 U.S. 410, 21 L.Ed.2d 637, 89 S.Ct. 584, and People v. Greer, 87 Ill.2d 89, 429 N.E.2d 505 (1981) (R.33; see also order, filed March 3, 1983, in the record in cause No. 82-CF-148, at pp. "C52-C53").

The People of the State of Illinois appealed to the Illinois Appellate Court, Fifth Judicial District, alleging that seizure of the items did not violate the Defendants' Fourth Amendment rights. The Appellate Court reversed the Trial Court's Order which suppressed the use of those items at trial.

The Supreme Court of the State of Illinois denied Petitioner's Petition for Leave to Appeal. People

State of Illinois, Respondent, v. Mark A. Seats, et al., Petitioners, Docket No. 59876.

REASONS FOR GRANTING THE WRIT

THE APPELLATE COURT, FIFTH DISTRICT, ERRED IN APPLYING ILLINOIS V. GATES RETROACTIVELY AND FURTHER ERRED IN HOLDING THAT THE COMPLAINT FOR SEARCH WARRANT IN THIS CASE WAS SUFFICIENT UNDER GATES.

The Illinois Appellate Court, Fifth District, first held that Illinois v. Gates (1983), _____ U.S. _____, 76 L.Ed.2d 527, 103 S.Ct. 2317, should be applied retroactively. Defendants submit that the Court implicitly ruled that the Complaint for Search Warrant in this case was not sufficient to establish probable cause under the "two-prong" test set forth in Aguilar and Spinelli. Therefore, unlike the factual situation before the Illinois Supreme Court in People v. Exline, 456 N.E.2d 112,

74 Ill.Dec. 610 (1983), the retroactivity issue had to be decided. The Court further held that this Complaint for Search Warrant was sufficient under Gates. Defendants respectfully submit that this Court's reasoning in Gates must be construed as signaling a "clean break with past precedent" and therefore, should not be applied retroactively. See United States v. Johnson, 457 U.S. 537, 73 L.Ed.2d 202, 102 S.Ct. 2579 (1982); Solem v. Stumer, ____ U.S. ____, ____ L.Ed.2d ____, ____ S.Ct. ____ (No. 81-2149, February 29, 1984).

Assuming, arguendo, that Gates should receive retroactive application, the Complaint for Search Warrant in the case at bar failed to satisfy the totality of circumstances test under Gates. That decision did not abandon the requirement of Aguilar and Spinelli that anonymous information trustworthy. Gates, 103 S.Ct. at 2337, n. 11. "...an (anonymous) informant's 'veracity', 'reliability', and 'basis of knowledge' are all

highly relevant in determining the value of his report." Gates, 103 S.Ct. at 2327 (emphasis added). This Court further stated that in deciding whether to issue a search warrant, the issuing magistrate must consider all the circumstances set forth in the affidavit before him, including the "veracity" and "basis of knowledge" of persons supplying hearsay information. See Gates, 103 S.Ct. at 2332 (emphasis added).

This Court, in Gates, agreed with the Illinois Supreme Court that, standing alone, the anonymous letter could not provide the basis for a magistrate's determination of the existence of probable cause, and stated, "(s)omething more then was required ... before a magistrate could conclude that there was probable cause to believe that contraband would be found in the Gates' home and car." Gates, 103 S.Ct. at 2326. Since there was much more information contained in the anonymous letter in Gates, which information was also more presumptively reliable, than that given

by the anonymous phone caller in the instant case, it cannot be disputed that something more was required here before a magistrate could determine that there was probable cause to believe that the stolen items could be found in the Defendants' trailer. Not only was there more corroboration by the police in Gates than in the case at bar, here there was no corroboration of this anonymous informant's tip with respect to the information before the issuing magistrate.

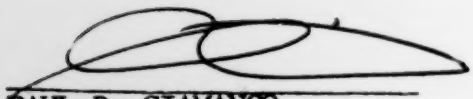
People v. Greer, 82 Ill.2d 89, 429 N.E.2d 505 (1981), involved an anonymous telephone caller who, as in this case, told the police that certain items were to be found in the Defendant's home. Based solely on that information the police obtained a Search Warrant without any independent corroboration. Here one of the items taken from the doctor's office was a black medical bag. The Appellate Court, Fifth District, concluded that since police officers knew these Defendants were not in the practice of medicine and the City of

Sandoval is small, possession of such a medical bag under ordinary circumstances would be unlikely. However, here, as in Greer, the veracity of the informant's statement is suspect. It could have been heard at a neighborhood bar, on local news or from the reading of a local newspaper account of the burglary and any number of other vehicles of communication.

CONCLUSION

Because Illinois v. Gates must be construed as signaling a clean break with past precedent, that decision should not be retroactively applied. Assuming the Appellate Court of Illinois, Fifth Judicial District, did not err in applying Gates retroactively, that Court did err by holding that the Complaint for Search Warrant in this case satisfied the Gates totality of circumstances test. This Honorable Court must grant a Writ of Certiorari to that Court and reverse its decision.

Respectfully submitted,



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APPENDIX

59876

ILLINOIS SUPREME COURT
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June 5, 1984

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No. 59876 - People State of Illinois, respondent, vs. Mark A. Seats, et al., petitioners. Leave to appeal, Appellate Court, Fifth District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on June 27, 1984.

NO. 5-83-0176

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

PEOPLE OF THE STATE OF ILLINOIS Plaintiff-Appellant, vs. MARK A. SEATS and TAMMIE SEATS, Defendants-Appellees.	) Appeal from the Circuit) Court of Marion County.))) Honorable) Richard G. Hodson,) Judge Presiding.

PRESIDING JUSTICE WELCH delivered the opinion of the court:

The State appeals from an order of the circuit court of Marion County suppressing certain evidence seized from the home of defendants Mark Seats

and Tammy Seats during a search conducted pursuant to a search warrant. (87 Ill.2d R. 604(a).) Three questions are presented by this appeal: (1) Should Illinois v. Gates (1983), ___ U.S. _____, 76 L.Ed.2d 527, 103 S.Ct. 2317 be applied retroactively? (2) If so, is the complaint for the search warrant in this case sufficient under Gates? (3) Does a "good faith exception" to the Fourth Amendment apply here? We answer the first two questions affirmatively and need not address the third.

The Sandoval, Illinois office of registered nurse Eva E. Schuler was burglarized on November 1, 1982. Taken from the office were a black medical bag, a calculator, and assorted medical instruments such as forceps, stethoscopes and a blood pressure kit. On Novermer 10, 1982, Ray Lee Jones, the assistant chief of police in Sandoval, appeared before a judge of the Fourth Judicial Circuit with a verified complaint for a search warrant. In that complaint, Jones stated that he

had received an anonymous phone call from a woman who informed him that the items taken in the burglary of Schuler's office were at 407 N.W. 2nd Street in Sandoval. She told Jones that she had seen the defendants carry a black medical bag into the trailer at that location. Jones further averred in the complaint that he had verified that the defendants lived at that address. He also stated that he knew the defendants and neither of them was engaged in any type of medical practice.

As Jones later testified during the defendants' preliminary hearing and the hearing on their suppression motion, no evidence outside the complaint was presented to the judge on November 10. The requested warrant was issued, and certain items were seized from the defendants' trailer. The defendants filed a motion to suppress use of those items at trial. A brief evidentiary hearing was held on March 3, 1983, at which the sole witness was officer Jones. At the conclusion of the hearing, the court granted defendants' motion. In a

written order memorializing its oral pronouncement, the court noted that it had relied upon, inter alia, Aguilar v. Texas (1964), 378 U.S. 108, 12 L.Ed.2d 723, 84 S.Ct. 1509, Spinelli v. United States (1969), 393 U.S. 410, 21 L.Ed.2d 637, 89 S.Ct. 584, and People v. Greer (1981), 87 Ill.2d 89, 429 N.E.2d 505.

Before deciding whether that order was correct, we must determine whether the Fourth Amendment analysis set forth in Illinois v. Gates (1983), _____,U.S. _____, 76 L.Ed.2d 527, 103 S.Ct. 2317, decided June 8, 1983, should be applied to this case. In United States v. Johnson (1982), 457 U.S. 537, 73 L.Ed.2d 202, 102 S.Ct. 2579, the Supreme Court undertook an extensive review and clarification of its precedents on whether Fourth Amendment decision should be retrospectively invoked. Justice Blackmun, in his majority opinion, concluded that, as a general rule, a Supreme Court decision construing the Fourth Amendment should govern all cases not yet final at the time the decision was rendered.

An exception to this rule occurs when the court expressly declares its decision to be "a clear break with the past." (Desist v. United States (1969), 394 U.S. 244, 248, 22 L.Ed.2d 248, 254, 89 S.Ct. 1030, 1033.) Such a newly announced principle will not be found to be retroactive. Examples of this type of ruling are when the court explicitly overrules its own past precedent, disapproves a practice it had previously sanctioned, or overturns a well-established body of lower court authority. The defendants assert that Gates falls into this category of Fourth Amendent decisions.

Following Aguilar and Spinelli, many authorities derived a "two-prong" test for assessing the sufficiency of a complaint for a search warrant based on information from a confidential source. First, the magistrate must be presented with facts to show how the informant obtained his information. Second, he must be given some of the underlying circumstances from which the complainant concluded that the informant was credible or his information

relialble. In the phraseology of the post - Aguilar and Spinelli decisions, the first of these requirements was referred to as the "basis of knowledge prong," while the second was labeled the "veracity prong." According to cases such as People v. Gates (1981), 85 Ill.2d 376, 423 N.E.2d 887, each test must be satisfied independently before a complaint for a search warrant would be approved.

In Gates, the Supreme Court disagreed with that interpretation of Aguilar and Spinelli. Justice Rehnquist explained in his majority opinion that while questions of the informant's credibility, reliability and the basis of his knowledge are "all highly relevant in determining the value of his report", those questions are not "entirely separate and independent requirements to be rigidly exacted in every case * * *." (_____ U.S. _____, _____, 76 L.Ed.2d 527, 543, 103 S.Ct. 2317, _____.) The significant issue in determining the applicability of Gates to this case is thus

whether that reasoning signaled a clean break with past precedent. We do not believe that it did.

First, the court in Gates did not explicitly overrule any of its own prior decisions. Indeed, Justice Rehnquist maintained that the analysis employed in Gates "is far more consistent with our prior treatment of probable cause than is any rigid demand that specific 'tests' be satisfied by every informant's tip." (____ U.S. _____, _____, 76 L.Ed.2d 527, 543-44, 103 S.Ct. 2317, _____.) In a footnote to this statement, he observed that as the language of Aguilar indicates, "we intended neither a rigid compartmentalization of the inquiries into an informant's 'veracity,' 'reliability' and 'basis of knowledge,' nor that these inquiries be elaborated exegeses of an informant's tip. Rather, we required only that some facts bearing on two particular issues be provided to the magistrate." (_____ U.S. _____, _____ n.6, 76 L.Ed.2d 527, 543 n.6., 103 S.Ct. 2317, 2328 n.6. (emphasis in original).) Far from

abandoning Aguilar and Spinelli, the Gates decision evinces an intent to return to the original propositions contained in those opinions.

Second, the court in Gates did not disapprove a practice which it had arguably sanctioned in the past. The majority opinion, in detailing the history of its post - Aguilar and Spinelli decisions, made plain that the court never adopted the conjunctive "two-prong test" fashioned by other courts and commentators. Nor, in those decisions, did it specifically reject such an approach. However, the absence of any language approving of that test in the Supreme Court's Fourth Amendment jurisprudence shows Gates did not mark a departure from a practice accepted by the court.

Third, Gates was not a major break from a nearly unanimous body of lower court authority. Such a break occurs when a decision overrules clear past precedent or disrupts a practice long accepted and widely relied upon. United States v. Johnson (1982), 457 U.S. 537, _____, 73 L.Ed.2d 202, 215,

102 S.Ct. 2579, _____, quoting Milton v. Wainwright (1972), 407 U.S. 371, 381 n.2, 33 L.Ed.2d 1, 9 n.2, 92 S.Ct. 2174, _____ n.2 (Stewart, J., dissenting).) In addition to not discarding any of its own precedent, the court in Gates did not expressly overrule lower court authority which applied the "two-prong test." It is also difficult to characterize Gates as disrupting practices widely relied upon, because it did not invalidate previously common police activity. Put another way, any reliance upon pre - Gates lower court law could only have been by violators of the law, and that reliance interest is not legitimate. See People v. Smith (1983), 95 Ill.2d 412, 422, 447 N.E.2d 809, 813 (applying United States v. Ross (1982), 456 U.S. 798, 72 L.Ed.2d 572, 102 S.Ct. 2157, retroactively).

The Supreme Court's decision in Gates, while articulating a method of analysis somewhat different from that used by some courts, set forth a standard ascertainable from its past precedents.

Its ruling was based on long-recognized, if occasionally rigidly interpreted, principles of Fourth Amendment law. Nothing in that decision suggests that it should be treated as an exception to the general rule of retroactivity stated in Johnson, and therefore we conclude that Gates should be applied here.

The court held in Gates that "[t]he task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the 'veracity' and 'basis of knowledge' of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place." (_____ U.S. _____, _____, 76 L.Ed.2d 527, 548, 103 S.Ct. 2317, _____.) The magistrate's determination of probable cause must be accorded great deference. Spinelli v. United States (1969), 393 U.S. 410, 419, 21 L.Ed.2d 637, 645, 89 S.Ct. 584, 591.) And, in order to

effectuate the preference for police action taken pursuant to a warrant (United States v. Ventresca (1965), 380 U.S. 102, 13 L.Ed.2d 684, 85 S.Ct. 741), our task as a reviewing court is limited to determining whether there was a substantial basis for concluding that probable cause existed. (Illinois v. Gates (1983), ____ U.S. ____, ____, 76 L.Ed.2d 527, 103 S.Ct. 2317, ____; Jones v. United States (1960), 362 U.S. 257, 272, 4 L.Ed.2d 697, 708, 80 S.Ct. 725, ____.) It is these principles which we must use in judging the sufficiency of the complaint for a search warrant.

The first fact which is immediately apparent is that the informer relied upon by officer Jones was anonymous. The People argue that this means that we can presume the informer to have been an "ordinary citizen," and thus reliable. (People v. Hoffman (1970) 45 Ill.2d 221, 257 N.E.2d 326, cert. denied, 400 U.S. 904, 27 L.Ed.2d 141, 91 S.Ct. 142; People v. Hester (1968), 39 Ill.2d 489, 237 N.E.2d 466, cert. dismissed, 397 U.S.

660, 25 L.Ed.2d 642, 90 S.Ct. 1408.) They reason that, unlike the "professional" informant, the anonymous tipster does not stand to benefit from his information. In re Boykin (1968), 39 Ill.2d 617, 237 N.E.2d 484.

The defendants respond that under pre - Gates Illinois law, the presumptively reliable status of a citizen informer does not attach to a citizen who does not identify himself. (Compare People v. Davis (1980), 86 Ill.App.3d 557, 407 N.E.2d 1109 with People v. Townsend (1980), 90 Ill.App.3d 1089, 414 N.E.2d 483; People v. Sylvester (1980), 86 Ill.App.3d 186, 407 N.E.2d 1002; People v. Mitchell (1979), 68 Ill.App.3d 370, 386 N.E.2d 153; People v. Kahl (1978), 63 Ill.App.3d 703, 380 N.E.2d 487; People v. Blackman (1978), 62 Ill.App.3d 726, 379 N.E.2d 344.) In People v. Martin (1977), 46 Ill.App.3d 943, 950, 361 N.E.2d 595, 600, the court quoted the following explanation for that rule.

"The courts have recognized a distinction between informers who are virtual agents of the police and 'citizen informants' who are chance witnesses to or victims of crime. The former are often criminally disposed or implicated, and supply their 'tips' to the authorities on a recurring basis, in secret, and for pecuniary or other personal gain. The latter are innocent of criminal involvement, and volunteer their information fortuitously, openly, and through motives of good citizenship. Because of these characteristics, the requisite showing of reliability in the case of a citizen informant is significantly less than that demanded a police informer." (People v. Ramey (1976), 16 Cal.3d 263, _____, 545 P.2d 1333, 1336, 127 Cal.Rptr. 629, 632 (emphasis added).)

The reasoning stated in Martin certainly survives Gates. There, Justice Rehnquist said that rigorous scrutiny of an informant's basis of knowledge is unnecessary if "an unquestionably honest citizen comes forward with a report of criminal activity - which if fabricated would subject him to criminal liability * * * ." ____ U.S. ____, _____, 76 L.Ed.2d 527, 545, 103 S.Ct. 2317, _____ (emphasis added); cf. Adams v. Williams (1972), 407 U.S. 143, 146, 32 L.Ed.2d 612, 617, 92 S.Ct. 1921, _____ (information given by a citizen known to authorities furnishes "a stronger case than obtains in the case of an anonymous telephone tip").

An anonymous informant has no inherent motive to lie, as often does the so-called "professional" informant, who is frequently rewarded with leniency or cash. On the other hand, the anonymous informant is not inherently constrained to tell the truth, as is the identified "ordinary

citizen," who could be penalized for misleading the police. These concerns prompt us to decline to apply any presumption of reliability to the anonymous informant. To do so would also be at odds with the Supreme Court's conclusion that the anonymous letter in Gates, standing alone, would not provide probable cause for a search warrant. ____ U.S. ____, ____, 76 L.Ed.2d 527, 541, 103 S.Ct. 2317, ____.

The authorities cited by the People do not justify invokation of the "citizen informant rule" here. In People v. Carton (1981), 95 Ill.App.3d 937, 420 N.E.2d 753, the informant, although not identified to the magistrate, actually had personal dealings with the affiant police officer. The informant was, if not completely identified to the authorities, at least recognizable by them, and not completely anonymous. It is not apparent whether the informant in People v. Williams (1978), 62 Ill.App.3d 874, 379 N.E.2d 1222, was known to the police, but to the extent that some

language in Williams may suggest that a presumption of reliability should attach to the report of an anonymous informer, it is not in accord with the policies advanced in Gates.

However, to conclude that an anonymous tip carries no special attributes of truth does not end the inquiry in this case. The "veracity of persons supplying anonymous tips is by hypothesis largely unknown, and unknowable. * * * Yet, such tips, particularly when supplemented by independent police investigation, frequently contribute to the solution of otherwise 'perfect crimes.' While a conscientious assessment of the basis for crediting such tips is required by the Fourth Amendment, a standard that leaves virtually no place for anonymous citizen informants is not." (Illinois v. Gates (1983), _____ U.S. ____, _____, 76 L.Ed.2d 527, 548, 103 S.Ct. 2317, _____.) The ultimate question in this case, as it was in Gates, is thus whether the anonymous information was sufficiently corroborated to give rise to a fair probability

that the described property was where the informant said it was.

Initially, we observe that, in the language of the pre - Gates decisions, the informant's "basis of knowledge" was personal observation. She mentioned that she saw some of the stolen property. This allegation in the complaint eliminates the possibility that the information could "have been heard at a neighborhood bar, or possibly, could have been heard on a local news broadcast, or could have been read in the paper." People v. Greer (1981), 87 Ill.2d 89, 94, 429 N.E.2d 505, 507.

Moreover, much of what the informant told officer Jones was substantiated by him from other sources. She stated that she had seen a black medical bag, and one had in fact been taken from nurse Schuler's office. She indicated that the defendants lived at 407 N.W. 2nd Street in Sandoval, and so they did. These facts can be added to information known to officer Jones and presented

to the issuing magistrate. Jones knew that the defendants were not engaged in the practice of medicine in any way, and possession by them of such an unusual item as a black medical bag under ordinary circumstances would be unlikely. It was also apparent to the magistrate that Sandoval is a small rural town, not a metropolitan area.

No single detail listed above would suffice to establish probable cause for the issuance of a warrant. But when the facts presented to the magistrate are considered together, they create a fair probability that the stolen property would be discovered in the defendants' residence. We conclude that the magistrate's decision to issue a warrant had a substantial basis in the facts presented to him. Accordingly, the order of the circuit court of Marion County granting defendants' suppression motion must be reversed and this cause remanded for further proceedings.

REVERSED AND REMANDED

KARNS and KASSERMAN, JJ., CONCUR.

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IN THE

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OCTOBER TERM, 1984

MARK A. SEATS, et al.,

Petitioners,

vs.

PEOPLE OF THE STATE OF ILLINOIS

Respondent.

On Petition For Writ Of Certiorari To The Appellate Court Of Illinois, Fifth Judicial District

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the Supreme Court should devote its limited time to entertain the issue of retroactivity when, in fact, *Gates* does not make new law but simply clarifies existing law.
2. Whether this Court should extend its valuable time on settled issues of law, since the absence of probable cause in this case is demonstrated by substantial evidence.

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In The

Supreme Court of the United States

October Term, 1984

MARK A. SEATS, et al.,

Petitioners,

vs.

PEOPLE OF THE STATE OF ILLINOIS

Respondent.

On Petition For Writ Of Certiorari To The Appellate Court Of Illinois, Fifth Judicial District

RESPONDENT'S BRIEF IN OPPOSITION

OPINION BELOW

Respondent appealed from an order by the Circuit Court, Marion County suppressing evidence seized from the home of petitioners during a search conducted pursuant to a search warrant. The Illinois Appellate Court reversed the order and remanded. The opinion of the Appellate Court of Illinois, Fifth District, is reported as *People v. Seats*, 121 Ill. App. 3d 637, 460 N.E.2d 110 (5th Dist. 1984). The Illinois Supreme Court denied Petition for Leave to Appeal in an unpublished order No. 59876 on June 5, 1984.

JURISDICTION

Petitioner invoked this Court's jurisdiction pursuant to 28 U.S.C. §1257(3). However, as explained more fully below, Respondent submits that no good reason exists for this Court to exercise its extraordinary and discretionary jurisdiction and grant the petition for a writ of certiorari.

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const. Amend. IV

> The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation and particularly describing the . . . .

U.S. Const. Amend. XIV

> Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF FACTS

The facts relevant to the issues raised by petitioner are adequately set forth in the opinions of the courts below and need not be restated at length here. Respondent directs this Court's attention to the argument portion of this brief, where the pertinent facts are fully discussed.

REASONS FOR DENYING THE WRIT

I.

THERE IS NO GENUINE ISSUE OF RETROACTIVITY SINCE *GATES* DOES NOT MAKE NEW LAW, IT ONLY CLARIFIES EXISTING LAW. ENTERTAINING THIS QUESTION WOULD BE A WASTE OF THE COURT'S PRECIOUS TIME.

As early as 1965, the Court in *United States v. Ventresca*, 380 U.S. 102, 85 S.Ct. 741 (1965) held that in establishing probable cause for a warrant to issue, the courts should use a common sense approach and to view the facts in a rational fashion.

Although the court in *Ventresca* was applying the *Aguilar v. State of Texas*, 378 U.S. 108, 84 S.Ct. 1509 (1964) test, it still observes that reviewing courts must not lose sight of practical considerations. In essence, the *Ventresca* court presaged the law explained in *Illinois v. Gates*, ... U.S. ....., 103 S.Ct. 2317 (1983) in 1965.

Gates is not new law. Courts have consistently relied on the "totality of the circumstances" in determining whether probable cause existed. The court would empha-

size the two elements of "basis of knowledge" and the "credibility of the source", while relying in whole on *all* the circumstances in the affidavit for a warrant.

The petitioners seek to avoid the effect of the *Gates* decision by arguing that it should not be applied retroactively, since it represents a fundamental shift in doctrine and construes an entirely new rule of law. This is clearly erroneous.

There is nothing to support the petitioners' argument limiting the applicability of *Gates* for the benefit of petitioners.

The *Gates* court retained reliance on the informant's veracity, reliability and basis of his knowledge in a fashion similar to the *Aguilar/Spirelli* test. However, the Court went on to say

> We do not agree, however, that these elements should be understood as entirely separate and independent requirements to be rigidly exacted in every case . . . *Gates*, 103 S.Ct. 2317, 2327.

Essentially this Court said it would continue applying the *Aguilar/Spinelli* test, but in addition to the other relevant factors. This is not new law, it is just more explicit.

If the basis for a warrant is sufficient under *Gates*, it also is sufficient under *Aguilar/Spinelli*.

II.

THE COURT SHOULD NOT EXPEND ITS VALUABLE TIME ON SETTLED ISSUES OF LAW SINCE THE PROBABLE CAUSE IN THIS CASE IS SUPPORTED BY SUBSTANTIAL EVIDENCE.

The police are entitled to rely on an anonymous tip from an ordinary citizen with no motive to lie. The Court in *Illinois v. Gates*, ... U.S. ....., 103 S.Ct. 2317 (1983) held that an informant's veracity, reliability and basis of his knowledge are highly relevant to the totality of the circumstances. *Gates*, 2327. However, the Court went on to say

> We do not agree, however, that these elements should be understood as entirely separate and independent requirements to be rigidly exacted in every case. *Gates*, 2327, 29.

The caller in the instant case said *she* observed the petitioner enter their trailer with the proceeds of a burglary. Therefore, it is from her own personal knowledge. (R. C.6).

Next, we ask, was her information reliable? Officer Jones testified that he received the information from what he believed to be a concerned citizen. Based on this fact, the information was presumed to be reliable. *In re Boykin*, 39 Ill.2d 617, 237 N.E.2d 460 (1968).

> We presume that the information from an anonymous caller is true in the absence of information to the contrary since there is nothing to gain from furnishing false information.

Next, the officer conducted a preliminary investigation prior to the obtaining of the search warrant. He also verified that there was a burglary and that the petitioners were not practicing medicine.

Based on all the foregoing information contained in the affidavit the judge had sufficient basis for a finding of probable cause. A magistrate should consider all the information appearing in the affidavit before deciding probable cause exists. *Franks v. Delaware,* 438 U.S. 154, 98 S.Ct. 2674 (1978).

The petitioner also asserts that an anonymous letter in and of itself is not sufficient for a finding of probable cause. This was true in the *Gates* case; however, the court in *Gates* did not know if the information relayed to the police was from the informant's own personal knowledge, or whether it may lack reliability. That is not the case here; in this case the caller's telephone tip stated that she saw the petitioners carrying a medical bag in their residence (Suppression Hearing, p. 17, lines 4-6). The Court in *Draper v. United States,* 358 U.S. 307, 79 S.Ct. 329 (1959) held that seemingly innocent activity can become suspicious in light of any anonymous tip and that the aura of suspicion may then ripen into probable cause.

There is probable cause under the *Gates* "totality of circumstances" test. There are several factors which enhance the credibility of the anonymous informant's tip. First, Sandoval is a very small community and most of its residents know each other. Second, the burglary of the medical center was not common knowledge. The concerned citizen informing the police probably knew where the black medical bag came from and also knew the petitioners. These facts coupled with the fact that Officer Jones knew the petitioners and knew they were not involved in the practice of medicine and that they lived within three blocks of the burglary would lead even the most reasonable person to believe a crime was committed and that the petitioners may have been involved. There is no doubt that under the *Gates* test there was probable cause shown in the affidavit.

The Court in *Gates* explained the implication of the totality test as follows:

> The task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the "veracity" and "basis of knowledge" of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place. And the duty of a reviewing court is simply to ensure that the magistrate had a "substantial basis for . . . conclud[ing]" that probable cause existed. (Citations omitted.) *Gates*, 103 S.Ct. at 2332.

With respect to information from an unidentified source, the Court noted that informant's tips come in many shapes and sizes from many different types of persons and that "one simple rule will not cover every situation." *Gates*, 103 at 2328-29.

Regarding the problem of applying the two-prong test of *Aguilar* to information provided by ordinary citizens, the Court commented that ordinary citizens generally do not provide extensive recitations of the basis of their everyday observations. 103 S.Ct. at 2331.

In the instant case, the information not only satisfied the "totality of the circumstances" test of *Gates*, but also comported with the previous "two prong" test in *Aguilar/Spinelli.*

The information met the "basis of knowledge" prong in that it was personal knowledge. It satisfied the "underlying basis" test enunciated in *People v. Chriest*, 42 Ill. App. 3d 656, 356 N.E.2d 587 (5th Dist. 1976). And second, the information met the "credibility of the source" prong. From the information furnished, it was obvious she knew the petitioners, and the policy had no reason to distrust her. As the trial record indicated:

> OFFICER JONES: We figured it was a concerned citizen trying to help. (R. 19)

In Illinois, under *People v. Hester*, 39 Ill.2d 489, 237 N.E.2d 466, 481 (1968), the Court held the ordinary citizen as distinguished from the professional tipster is presumed to be reliable.

There is no need to establish a "track record" of reliability. *People v. McClellan*, 34 Ill.2d 572, 218 N.E.2d 97 (1966).

Moreover, to require a showing of the reliability of an ordinary citizen would be to engage in the unrealistically rigid approach condemned by the Court in *Gates*, 103 S.Ct. 2317, 2330 n.9.

Under *Gates*, we ask whether the magistrate made a practical, common sense decision considering all the circumstances. *Gates*, 2332.

This case is exactly what the *Gates* case contemplated, a set of circumstances all intermeshing to corroborate each other. The information indicated that the proceeds of the burglary could be found at the petitioners' trailer; it was based on personal knowledge of the informant, and was received only nine days after the burglary. The officer had no reason to doubt the caller's veracity. All the information, when considered collectively, was sufficient for the police to obtain a warrant. It would be nonfeasance on the officer's part to have ignored all the facts before him. The judge considering the foregoing facts obviously made an impartial and relatively simple decision—issue the warrant. There can be no doubt, in light of these facts, that under *Gates* there was probable cause.

CONCLUSION

The Appellate Court of Illinois was correct in applying the standards of *Illinois v. Gates*. The facts of this case satisfy the "totality of circumstances" test in *Gates*. This Honorable Court must deny a writ of certiorari.

Respectfully submitted,

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